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IN THE

Supreme Court of the United States

October Term, 1964

No. 455

AMERICAN AIRLINES, INC.,

Petitioner,

v.

JOSEPH V. MANNING, as President of the American Airlines Chapter, Flight Engineers' International Association AFL-CIO, and AMERICAN AIRLINES CHAPTER, FLIGHT ENGINEERS' INTERNATIONAL ASSOCIATION, AFL-CIO, an unincorporated association,

Respondents.

MEMORANDUM OF PETITIONER SUGGESTING THAT THE CASE IS MOOT

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This memorandum is filed to advise the Court of developments occurring after the granting of the petition for certiorari herein which, in petitioner's view, render this case moot.*

* A similar position is being taken also by petitioners in *O'Connell, etc., et al.* v. *Manning, etc., et al.*, No. 454, Oct. Term 1964, and a Supplemental Joint Appendix therefore is being filed in both cases concurrently. Attention is invited to the motion submitted by petitioners in the *O'Connell* case. We understand that the motion refers to factual matters which, for brevity, are not repeated herein.

On March 12, 1965, the parties entered into collective bargaining agreements disposing of all issues in dispute.* Of particular significance from the standpoint of this case is the "Tripartite Agreement" set forth in the Supplemental Joint Appendix, which contains detailed provisions prescribing the representation and bargaining relationships of the parties in the future. Also set forth in the Supplemental Joint Appendix is a letter signed by the Secretary of Labor and the Chairman of the National Mediation Board, which includes the following statement:

> "Those provisions of the said Tripartite Agreement relating to bargaining and the performance of the representation function terminated a long-standing dispute of substantial impact on the airline industry and the public in a manner considered equitable, reasonable, and in full consideration of the respective contentions of the respective parties."

It is not anticipated that respondents will take issue with the position that the litigation is moot. The incidents involved in the litigation occurred approximately two years ago, and the labor dispute has been resolved in its entirety by the settlement referred to above.** Thus, a case or controversy no longer exists.

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* The agreements are effective as of December 11, 1965.

** The questions set forth in the petition for certiorari are as follows (pp. 2-3):

> "1. '* * * whether the Railway Labor Act prohibits an employer who faces the demands of two employee groups that call for a joint solution from insisting that the negotiations be held simultaneously in one room and across one table, and requires him instead to negotiate across two tables in two separate rooms, running back and forth from one to the other.'*
>
> "2. Does the National Mediation Board have exclusive or primary jurisdiction over the question of whether an employer

In view of this situation, it is our understanding of *United States* v. *Munsingwear*, 340 U. S. 36 (1950), that application should be made to reverse or vacate the decision below and to remand with a direction to dismiss. The Court's opinion in the *Munsingwear* case contains the following statement (340 U. S. at 39-40):

> "The established practice of the Court in dealing with a civil case from a court in the federal system which has become moot while on its way here or pending our decision on the merits is to reverse or vacate the judgment below and remand with a direction to dismiss. That was said in Duke Power Co. v. Greenwood County, 299 U. S. 259, 267, to be 'the duty of the appellate court.' That procedure clears the path for future relitigation of the issues between the parties and eliminates a judgment, review of which was prevented through happenstance. When that procedure is followed, the rights of all parties are preserved; none is prejudiced by a decision which in the statutory scheme was only preliminary." (Footnote omitted.)

See also *Brotherhood of Railroad Trainmen* v. *Chicago & Illinois R.*, 375 U. S. 18 (1963); *Publishers' Association of New York City* v. *New York Mailers' Union Number 6*, 376 U. S. 775 (1964).

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has bargained properly, when the bargaining is being conducted under the Board's auspices?'

"3. Are the requirements of the Norris-LaGuardia Act applicable in an injunction suit by a union against an employer covered by the Railway Labor Act?"

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* From the dissenting opinion in the instant case by Hon. Henry J. Friendly, U. S. C. J., 329 F. 2d at 23-24 (Jt. App. 25).

Conclusion

The judgment should be vacated and the case remanded to the United States District Court for the Southern District of New York for dismissal because of mootness.

Dated: New York, New York
April 2, 1965

Respectfully submitted,

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